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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIDDHARTH HARIHARAN,  
 individually and on behalf of all others  
 similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-2509 SBA

**PLAINTIFFS' UNOPPOSED  
 ADMINISTRATIVE MOTION TO  
 TRANSFER ACTIONS TO THE SAN JOSE  
 DIVISION**

BRANDON MARSHALL, individually  
 and on behalf of all others similarly  
 situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-3538 SBA

[Caption continued next page]

MICHAEL DEVINE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-3539 SBA

MARK FICHTNER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-3540 SBA

DANIEL STOVER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., *et al.*,

Defendants.

Case No. C 11-3541 SBA

Pursuant to Civil Local Rule 7-11, all Plaintiffs in the above-captioned actions hereby file this Unopposed Administrative Motion to Transfer Actions to the San Jose Division of the Northern District of California. A Proposed Order is attached hereto as Exhibit A. The Parties have met and conferred and Defendants have advised Plaintiffs that they do not oppose this Administrative Motion. (*See* attached Declaration of Eric B. Fastiff in Support of Plaintiffs' Unopposed Administrative Motion to Transfer Actions to the San Jose Division, at ¶ 2.) Pursuant to Civil Local Rule 7-11(c), this Administrative Motion is submitted for immediate determination without hearing.

#### **I. BACKGROUND**

After Plaintiff Siddharth Hariharan filed the initial action in Alameda County Superior Court, Defendants removed it to the San Francisco/Oakland Division (Dkt. No. 1). Four cases alleging the same conspiracy and asserting the same claims for relief against the same seven

Defendants were filed in Santa Clara Superior Court. Defendants subsequently removed those actions to the San Jose Division, and filed an Administrative Motion to Relate Cases to the first filed action (Dkt. No. 41). The Court ordered the cases related on July 27, 2011 (Dkt. No. 52). As a result, all five actions are now pending before this Court in the San Francisco/Oakland Division.<sup>1</sup>

**II. ALL FIVE CASES AROSE IN SANTA CLARA COUNTY BECAUSE A SUBSTANTIAL PART OF THE EVENTS WHICH GIVE RISE TO PLAINTIFFS' CLAIMS OCCURRED THERE**

These actions are properly venued in the San Jose Division. Local Rule 3-2(c) states, "A civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred . . . ." As alleged in all five complaints, Defendants engaged in a conspiracy with each other to fix their employees' compensation. Five of the seven Defendants are headquartered in Santa Clara County. The five complaints allege the other two Defendants, Pixar (headquartered in Alameda County) and Lucasfilm Ltd. (headquartered in San Francisco County), reached agreements with the Santa Clara County-based Defendants.

The Plaintiffs in the four related actions were all employed by a Defendant headquartered in Santa Clara County. Plaintiffs Michael Devine and Brandon Marshall worked as software engineers for Defendant Adobe Systems Inc., headquartered in San Jose. (*Devine* Compl. ¶ 21; *Marshall* Compl. ¶ 21.) Plaintiff Mark Fichtner worked as a software engineer for Defendant Intel Corp., headquartered in Santa Clara. (*Fichtner* Compl. ¶ 21.) Plaintiff Daniel Stover worked as a software engineer for Defendant Intuit Inc., headquartered in Mountain View. (*Stover* Compl. ¶ 21.)

In the fifth action, Plaintiff Siddharth Hariharan worked as a software engineer for Defendant Lucasfilm Ltd., headquartered in San Francisco County. (Hariharan Compl. ¶ 19.) Hariharan alleges he was harmed by all Defendants' illegal agreements, including those in which the Santa Clara County-based Defendants participated. (*Hariharan* Compl. ¶¶ 19, 25, 48-85.)

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<sup>1</sup> The cases are: (1) *Hariharan v. Adobe Systems Inc., et al.*, Case No. 11-CV-2509-SBA; (2) *Marshall v. Adobe Systems Inc., et al.*, Case No. 11-CV-3538-SBA; (3) *Devine v. Adobe Systems Inc., et al.*, Case No. 11-CV-3539-SBA; (4) *Fichtner v. Adobe Systems Inc., et al.*, Case No. 11-CV-3540-SBA; and (5) *Stover v. Adobe Systems Inc., et al.*, Case No. 11-CV-3541-SBA.

By Defendants' estimates, the five Santa Clara County-based Defendants employed at least 98% of class members.<sup>2</sup> These five Defendants allegedly negotiated, finalized, implemented, and enforced agreements to eliminate competition with each other, within Santa Clara County. (*Devine* Compl. ¶¶ 61-96; *Marshall* Compl. ¶¶ 61-96; *Fichtner* Compl. ¶¶ 61-96; and *Stover* Compl. ¶¶ 61-96.)

Accordingly, "a substantial part of the events . . . which give rise to the claim occurred" in Santa Clara County. Civ. L.R. 3-2(c). Civil Local Rule 3-2(e) directs civil actions arising in Santa Clara County be assigned to the San Jose Division.

### **III. THE COURT SHOULD ORDER INTRADISTRICT TRANSFER OF THE FIVE ACTIONS TO THE SAN JOSE DIVISION**

This Court should transfer the five cases to the San Jose Division. Pursuant to Civil Local Rule 3-2(h), "Whenever a Judge finds, upon the Judge's own motion or the motion of any party, that a civil action has not been assigned to the proper division within this district in accordance with this rule, or that the convenience of parties and witnesses and the interests of justice will be served by transferring the action to a different division within the district, the Judge may order such transfer, subject to the provisions of the Court's Assignment Plan."

Here, the vast majority of the percipient witnesses, relevant documents, and Defendants are located in Santa Clara County. Four of the five Plaintiffs worked for Defendants headquartered in Santa Clara County. At least 98% of class members worked for Defendants headquartered in Santa Clara County. Accordingly, transfer to the San Jose Division will best serve the "convenience of parties and witnesses" and will be in the "interests of justice." Civ. L.R. 3-2(h).

This Court has granted motions for transfer under similar circumstances. *See, e.g., Rivera*

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<sup>2</sup> In Defendants' notice of removal and supporting papers, Defendants use current employees as a surrogate for employees who worked from January 1, 2005 through January 1, 2010 (the class period). (*See* Notice of Removal ¶ 21, at p. 6, Dkt. No. 1.) Defendants estimate that they currently employ 83,300 individuals who would otherwise qualify as members of the class. (*Id.*) Of these, Defendants estimate that 82,283 work for defendants who maintain their principal places of business in Santa Clara County: Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., and Intuit Inc. (Declarations of Rhonda Hjort ¶ 3, Dkt. No. 4; Jack Gilmore ¶ 3, Dkt. No. 5; Joel Podolny ¶ 3, Dkt. No. 6; Tadhg Bourke ¶ 3, Dkt. No. 7; James M. Kennedy ¶ 3, Dkt. No. 8; Debbie R. Oldham-Auker ¶ 2, Dkt. No. 9; and Kumud Kokal ¶ 3, Dkt. No. 31-1.)

1 *v. Hewlett Packard Corp.*, Case No. 03-0939, 2003 WL 24029472, at \*1-\*2 (N.D. Cal. Apr. 22,  
 2 2003) (Armstrong, J.) (granting Hewlett Packard's motion for transfer to the San Jose Division in  
 3 an unlawful termination case, because Hewlett Packard maintained its principal place of business  
 4 in Santa Clara County); *Baltazar v. Apple Inc.*, Case No. 10-3231, 2010 WL 4392740, at \*1 (N.D.  
 5 Cal. Oct. 29, 2010) (White, J.) (granting Apple's motion for transfer to the San Jose Division in a  
 6 product defect case regarding the iPad, where the design and development of the iPad occurred in  
 7 Santa Clara County, and the advertising and marketing plans were developed there as well).

8 As the substantial part of the events occurred in Santa Clara County, and because it will be  
 9 more convenient for the parties and witnesses and in the interests of justice for all five cases to  
 10 proceed before a Judge in the San Jose Division, Plaintiffs respectfully request that the Court  
 11 transfer all five actions to the San Jose Division.

12 Dated: August 2, 2011

Respectfully Submitted,

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 14 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

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 16 By: /s/ Eric B. Fastiff  
 17 Eric B. Fastiff

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